

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|-------------------------------|---|------------------------------------|---------------------------------|
| Investigator: Carter Salis | Team: Squad #4 | CCRB Case #: 201808548 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Sunday, 10/14/2018 4:25 PM | Location of Incident: 59th Street Columbus Circle Subway station | Precinct: 18 | 18 Mo. SOL 4/14/2020 | EO SOL 11/29/2020 | |
| Date/Time CV Reported Sun, 10/14/2018 7:00 PM | CV Reported At: Precinct | How CV Reported: In-person | Date/Time Received at CCRB Mon, 10/15/2018 2:49 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------|--------|--------|---------|
| 1. SGT Robert Zhen | 05562 | 931479 | TB DT01 |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. POM Ronald Mattza | 17845 | 958891 | TB DT01 |
| 2. POM Abdullah Mamun | 18456 | 958865 | TB DT01 |
| 3. POM Mohammad Islam | 12624 | 956766 | TB DT01 |
| 4. POM Ervin Note | 20003 | 958994 | TB DT01 |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------|--|-----------------------------|
| A.SGT Robert Zhen | Force: Sergeant Robert Zhen used physical force against § 87(2)(b) | |

Case Summary

On October 14, 2018, § 87(2)(b) filed this complaint in-person at the Transit Bureau District 1 stationhouse. On October 15, 2018, it was received by the CCRB.

On October 14, 2018, at approximately 4:25 PM, inside the 59th Street-Columbus Circle subway station in Manhattan, Sgt. Robert Zhen, PO Ronald Mattza, PO Ervin Note, PO Mohammad Islam, and PO Abdullah Mamun, from Transit District 1, stopped § 87(2)(b) for entering the subway system through an emergency gate without payment. PO Mattza issued § 87(2)(b) a summons for theft of service.

As § 87(2)(b) walked away from the officers, he clapped his hands and told the officers, "Great Job." § 87(2)(b) walked to a stairwell and was followed by Sgt. Zhen, who told § 87(2)(b) that he was trespassing and needed to leave the subway station. Sgt. Zhen then pushed § 87(2)(b) in the middle of his back, causing him to stumble forward several steps (**Allegation A: Force**, § 87(2)(g)). PO Mattza then ejected § 87(2)(b) from the transit system by holding on to his upper arm and walking him out of the subway station through the emergency gate.

Findings and Recommendations

Allegation (A) Force: Sergeant Robert Zhen used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) entered the 59th Street Columbus Circle subway station through an emergency gate, although it is disputed whether § 87(2)(b) violated the fare. Sgt. Zhen and PO Mattza stopped § 87(2)(b) on the middle of the mezzanine level, and were followed by PO Note, PO Islam, and PO Mamun, who stood nearby as a precautionary measure. PO Note conducted a warrant check for § 87(2)(b) on his department issued cell phone and PO Mattza issued Transit Adjudication Bureau summons #§ 87(2)(b) (BR 01) to § 87(2)(b) for entering the subway system without payment. The events following the issuing of § 87(2)(b)'s summons are contested, but § 87(2)(b) was ultimately ejected from the transit system and PO Mattza prepared a Transit Ejection Report (BR 02).

§ 87(2)(b) (BR 03) stated that, after PO Mattza issued him his summons, he told the officers, "Great Job," and applauded the officers as he walked away. As § 87(2)(b) began descending a set of stairs, Sgt. Zhen approached § 87(2)(b) and told him that he was trespassing and needed to leave the subway station. § 87(2)(b) walked back up the stairs. Sgt. Zhen placed his hand on § 87(2)(b)'s shoulder and walked him towards the turnstiles, at which time he pushed § 87(2)(b) with one open hand in the middle of his back, causing him to stumble forward about two steps. PO Mattza then gripped § 87(2)(b) right arm and walked him to the turnstiles. § 87(2)(b) exited through the turnstiles, and when he attempted to legally re-enter the transit system, Sgt. Zhen told him that he could not come in.

On December 24, 2019, the investigator received four BWC videos related to this incident, although this footage does not capture the period during which the alleged misconduct was said to have occurred. Attempts were made to obtain video footage from the Metropolitan Transit Authority, but these attempts were ultimately unsuccessful.

Sgt. Zhen (BR 04) stated that after PO Mattza issued § 87(2)(b)'s summons, § 87(2)(b) walked away, and the officers returned to the location from which Sgt. Zhen first observed § 87(2)(b) commit the alleged infraction. While Sgt. Zhen was signing PO Mattza's, PO Islam's, and PO Mamun's memo books, § 87(2)(b) approached and clapped his hands in front of the officer, which reminded Sgt. Zhen that § 87(2)(b) had not paid his fare and was subject to ejection from the subway station. Sgt. Zhen told § 87(2)(b) that he needed to leave

the subway station, and § 87(2)(b) responded that he was not going to leave. Sgt. Zhen and PO Mattza followed § 87(2)(b) who had started walking back towards the staircase, and PO Mattza grabbed § 87(2)(b) upper arm and guided him outside the emergency gate.

Sgt. Zhen denied pushing § 87(2)(b) in his back or seeing any other officer do so. Sgt. Zhen did not recall making physical contact with § 87(2)(b) and apart from PO Mattza grabbing § 87(2)(b) s upper arm, he did not see any other officer make physical contact with § 87(2)(b).

PO Mattza (BR 05) stated that, when ejecting § 87(2)(b) from the subway station, he grabbed § 87(2)(b) s upper arm and guided him out of the emergency gate. PO Mattza believed that Sgt. Zhen held on to the other side of § 87(2)(b) and helped guide him out of the station, although he could not recall the exact nature of Sgt. Zhen's physical contact with § 87(2)(b). PO Mattza denied witnessing Sgt. Zhen push § 87(2)(b) in his back.

PO Islam's (BR 06), PO Mamun's (BR 07), and PO Note's (BR 08) statements were consistent with Sgt. Zhen's statement. Neither PO Islam nor PO Mamun saw or became aware that an officer pushed § 87(2)(b) in his back. PO Note, who left the scene of the incident while § 87(2)(b) s summons was being issued, never became aware of an officer pushing § 87(2)(b) in his back.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been party (BR 09).
- Sergeant Robert Zhen has been a member-of-service for sixteen years and has been a subject in three CCRB complaints and four allegations, none of which were substantiated.

§ 87(2)(g)
§ 87(2)(g)

Mediation, Civil and Criminal Histories

- On December 11, 2018, this case was sent to mediation and on February 5, 2019 the case was returned to investigation as the complaint was no longer eligible for mediation.
- On April 8, 2019, a FOIL request was submitted to the Office of the Comptroller to determine if any Notice of Claim had been filed in relation to this incident. The requested information will be added to the case file upon receipt.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR 10).

Squad No.: Squad 4

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| Investigator: | _____ | Investigator Carter Salis | 04/10/2019 |
| | Signature | Print Title & Name | Date |

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|---------------|-----------|--------------------|-------|
| Squad Leader: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |

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| Reviewer: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |